INJUNCTIONS IN LABOR DISPUTES.

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THE outburst of criticism upon the use of injunctions in labor controversies which characterized the last session of Congress was a sure harbinger of a Presidential campaign. During preceding sessions Senators and Representatives had appeared almost oblivious to the "judicial outrages" which "Federal tyrants," in the fashion of judges, were perpetrating upon good and innocent men by "Star Chamber proceedings, and traps for trying, convicting and imprisoning them." But the early days of the Sixtieth Congress witnessed a great awakening. Over thirty bills restraining and regulating the writ of injunction were introduced.

Mr. Henry, of Texas, in a speech from which the above-quoted phrases are taken, compliments himself upon being the earliest proponent in Congress of this sort of legislation. But even he must yield precedence in this great awakening to the President, who, in his Messages to Congress, called "attention to the need of some action in connection with the abuse of injunctions in labor cases." "It is all wrong," he declared, "to use the injunction to prevent the entirely proper and legitimate action of labor organizations in their struggle for industrial betterment, or under the guise of protecting property rights unwarrantably to invade the fundamental rights of the individual."

It is a sad defect, we submit, as well in the Presidential Messages as in the more impassioned speech of the Congressman, that the names of the judicial tyrants and abusers of the injunction are not vouchsafed. Surely, if such grievous wrongs have been committed, they are matters of record, and it should be easy to name each wrong-doer: to brand him with the charge,

"Thou art the man." True, such a course would call for real courage, and, above all, for accurate information. But it is the only course that is fair towards the judiciary as a body. Moreover, any judge who, "under the guise of protecting property rights," has "unwarrantably invaded the fundamental rights of the individual," is unfit to wear the judicial ermine. If subject to removal by the President, he should be summarily dismissed. If not so subject, the President should make every proper effort to have him impeached. The fact that no such action has been taken, or effort put forth, justifies the suspicion that this alleged judicial offender is but a figment of Presidential campaign fancy.

Mr. Taft puts the case for legislative regulation much more mildly. He writes to the Ohio labor organizations:

"I have taken occasion to say in public speeches that the power to issue injunctions *ex parte* has given rise to certain abuses and injustices to the laborers engaged in the peaceful strike. Men leave employment on a strike, counsel for the employer applies to a judge and presents an affidavit averring fear of threatened violence, and making such a case on the *ex parte* statement that the judge feels called upon to issue a temporary restraining order. This is served upon all the strikers; they are not lawyers; their fears are aroused by the process with which they are not acquainted, and, although their purpose may have been entirely lawful, their common determination to carry through the strike is weakened by an order which they have never had an opportunity to question, and which is calculated to discourage their proceeding in their original purpose. To avoid this injustice, I believe, as I have already said, that the Federal statute might well be made what it was originally, requiring notice and a hearing before an injunction issues."

It will be observed that Mr. Taft makes no charge of judicial dereliction in this matter. The abuses and injustices are due to the misleading affidavits of the employer. Upon these affidavits he gets a temporary injunction against threatened violence by strikers; and the latter, mistaking it for an injunction against a peaceful strike, are weakened and discouraged, and the strike collapses. Here again the present writer yearns for a bill of particulars. He would like to have a concrete example of a strike collapsing in this way. For a number of years he has had occasion to follow this class of legislation with care, but without retainer from either employer or employed; and a case of the sort supposed by Mr. Taft has never fallen under his notice. Indeed, it is difficult to imagine such a case.

In the first place, whenever an *ex parte* injunction is granted,

provision is made for an early hearing of a motion to show cause why it should not be continued. Such was Mr. Taft's own practice when judge, as shown in the Toledo, Ann Arbor and Michigan Railway case, where he granted an *ex parte* injunction against Arthur, Chief of the Brotherhood of Locomotive Engineers. Undoubtedly, striking laborers are not lawyers; but every strike of sufficient importance to be enjoined is under the control of professional labor leaders, and commands abundant legal advice. It is well settled that an *ex parte* injunction will not be granted against a mere strike. Every laborer knows this. It was repeatedly decided by Judge Taft, and admitted by the hypothetical case of Candidate Taft; for his supposed affidavit avers fear of violence. Of course, the injunction would be confined to the case made by the affidavit and, hence, would restrain the strikers from the use of violence only. If the affidavit presented a case of threatened boycott, the order would enjoin against that; but, as Judge Taft said in Thomas *vs.* Cincinnati, New Orleans and Texas Pacific Railway (62 Fed., 803), when punishing Phelan for contempt:

"The distinction between an ordinary lawful and peaceable strike, entered upon to obtain concessions in the terms of the strikers' employment, and a boycott, is not a fanciful one, or one which needs the power of fine distinction to determine which is which. *Every laboring man recognizes the one or the other as quickly as a lawyer or a judge.*"

We need only to appeal from Candidate Taft to Judge Taft to discover that no set of laborers, who strike for a purpose entirely lawful, will be weakened, discouraged and defeated by a temporary injunction against violent boycotting or other unlawful misconduct on their part. Dealing with the argument that "a preliminary injunction ends the strike," a learned Federal judge has well said: "The defendants will not be required to abandon a lawfully conducted strike; and, if they do abandon it, this would be voluntary, and a confession on their part that only by lawlessness can the strike be successfully maintained."

In several reported cases, the original order has been modified upon defendants' request, because its terms were too broad or indefinite, and might seem to include mere lawful persuasion and other peaceful acts. Such are the cases of Plant *vs.* Woods (176 Mass., 492), Gray *vs.* Building Trades Council (91 Minn., 171) and Jetton-Dreckle Lumber Co. *vs.* Mather ([Fla.] 43 So.,

590). In others, the order has been set aside, because the plaintiff's affidavits have been overborne by defendant's evidence, as in Allis Chalmers Co. *vs.* Iron Moulders' Union (150 Fed., 155), Wabash Railway Co. *vs.* Hannahan (121 Fed., 563) and Van der Plant *vs.* Undertakers' Association (70 N. J. Eq., 116). But in none, so far as the writer has discovered, has the temporary injunction caused a collapse of the strike. Indeed, as the Chancellor of New Jersey remarked in denying a motion to dissolve an order enjoining a threatened boycott: "If the defendants do not intend to do the things forbidden by the restraining order, then the order will do them no harm."

The fact referred to, that *ex parte* injunctions have been modified or set aside upon the opposing affidavits of striking laborers, shows that they know their rights and have only to assert them, precisely as any other litigants would do in case of an injunction, in order to secure their prompt and even jealous enforcement by the courts.

It is no indication of judicial abuse of this process that an *ex parte* order has been modified occasionally.

In the famous case of Arthur *vs.* Oakes (63 Fed., 310) the judge who granted the *ex parte* injunction modified it, upon Chief Arthur's application, by striking out a clause which might be construed to restrain him from giving friendly advice to the employees of the railways, as a body or individually. Said the judge:

> "The language of a writ of injunction should be clear and explicit, and, if possible, above criticism as to its meaning. Since, therefore, the language of this particular phrase may be misconceived, the motion in that respect will be granted, and the clause stricken from the writ."

Surely no fair-minded man can justly complain of judges who are thus ready to rectify mistakes; and, it is submitted, no one can study the judicial opinions in labor injunction cases without being impressed with the anxiety of the courts to do full justice to the employees.

The fact that, now and then, an *ex parte* order has been too broad in its terms, or has been induced by exaggerated, or even false, statements on the part of employers, furnishes no sufficient ground for the prohibitory legislation demanded by labor leaders. As well might legislation be invoked to prohibit courts of equity from granting injunctions against nuisances, trespass,

waste and other irreparable injuries to property, because at times such a writ was issued improvidently or on untrustworthy affidavits. Moreover, the courts everywhere are demonstrating their ability and desire to limit injunctions in labor disputes to those acts or threats of laborers which are clearly unlawful, such as violence, intimidation or malicious boycotts.

The topic came before the Supreme Court of Florida for the first time in April, 1907. An *ex parte* order had been granted by a circuit judge, upon the application of the Jetton-Dreckle Lumber Company, restraining certain labor unions from enforcing their rules (which forbade their members working for any employer of non-union labor), and thus enforcing a sympathetic strike against the lumber company. The defendants answered, denying all acts of violence, or threats of intimidation, coercion or boycott, and asked that the injunction be dissolved. Upon this hearing (apparently before the judge who granted the *ex parte* order) the injunction was modified, so as to restrain the defendants only from acts and threats of violence, intimidation, coercion or boycott. The lumber company appealed from this modification, but the Supreme Court unanimously declared that "the decided weight, if not the universal rule, of the modern American cases sustains the action of the circuit court in refusing to extend the effects of the injunction so as to include the peaceable enforcement by labor unions of their reasonable rules." This declaration is supported by a long array of State and Federal decisions.

Another case which admirably illustrates the present attitude of our courts is that of the Wabash Railway Co. *vs.* Hannahan and others (121 Fed., 563), decided in 1903. The railroad company, upon a verified bill of complaint, obtained an *ex parte* restraining order against the defendants, as officers of the Brotherhood of Locomotive Firemen and of the Brotherhood of Railroad Trainmen, "commanding them to refrain from ordering or causing a strike of complainant's employees." The defendants were given fifteen days within which to appear and show cause why the order should be dissolved or modified. They did appear, and by their sworn answer and affidavits convinced the court that they were not maliciously interfering with the Wabash employees; were not engaging in any intimidation or coercion of such employees, or in any unlawful combination against the Wabash

Company's business, or the transportation of the United States mails or of interstate commerce, as had been charged in complainant's bill; whereupon the court vacated the *ex parte* order. "It results from the facts presented," said the judge, "that this court should not interfere with the exercise of the right, on the part of complainant's employees who are members of the Brotherhoods in question, of quitting the service of complainant in a body, by restraining the defendants, who are officers of the Brotherhood, from exercising the functions of their office, prerequisite thereto."

In neither of these cases, it will be observed, did the injunction operate to "weaken the common determination" of the laborers to strike or "discourage their proceeding in their lawful purpose." It would appear, therefore, that Mr. Taft is not happy in the only reason which he assigns for legislation on this topic.

Certainly, judicial discretion as to the time and manner of employing this extraordinary writ ought not to be interfered with by statute, unless the necessity therefor is clearly shown. It is a fundamental rule of equity jurisprudence that this writ is not to be issued in doubtful cases; that "it will be refused till the courts are satisfied that the case before them is of a right about to be destroyed, irreparably injured, or great and lasting injury about to be done by an illegal act." It is equally fundamental, writes Justice Story, "that courts of equity constantly decline to lay down any rule which shall limit their power and discretion as to particular cases, in which such injunctions shall be granted or withheld." He adds:

> "There is wisdom in this course, for it is impossible to foresee all the exigencies of society which may require their aid to protect rights or redress wrongs. The jurisdiction of these courts, thus operating by special injunction, is manifestly indispensable for the purposes of social justice in a great variety of cases, and, therefore, should be fostered and upheld by a steady confidence."

One of the exigencies referred to by Judge Story was presented by the attempt of Debs, Phelan and other officers of the American Railway Union to paralyze interstate commerce over a large portion of this country. They declared that their attempt was "inspired by a purpose to subserve the public good"; and that if their struggle was successful every wage-earner in the land would share in its beneficial effects. But it was waged with

a ruthless disregard of the rights of non-union laborers, of the railways and of the public. The struggle was precipitated by a strike of the employees of the Pullman Car Company in May, 1894, because of its refusal to restore wages which had been reduced the year before. The union threatened the Pullman Company with a boycott unless it acceded to a proposed arbitration with its employees. Upon its refusal, Debs, the president of the union, formally declared the boycott, on June 26th. All railway employees were ordered by Debs to refuse to handle Pullman cars. If this refusal did not force their employers to cut out such cars, the employees were to strike, and to make every effort to tie up and cripple the recalcitrant railways. So successfully was the scheme carried out that, on June 29th, Debs telegraphed to Phelan: "About twenty-five lines now paralyzed. More following. Tremendous blockade."

Of this scheme Judge Taft said, in Thomas *vs.* Cincinnati, New Orleans and Texas Pacific Railway (62 Fed., 803):

> "The gigantic character of the conspiracy of the American Railway Union staggers the imagination. . . . Debs, Phelan and their associates proposed, by inciting employees of all the railways of the country to suddenly quit their service without any dissatisfaction with the terms of their own employment, to paralyze utterly all the traffic by which the people live, and in this way to compel Pullman, for whose acts neither the public nor the railway companies are in the slightest degree responsible, and over whose acts they can lawfully exercise no control, to pay more wages to his employees."

In the execution of this conspiracy, employees who refused to join in the strike, and those who took the places of strikers, were assaulted and driven from their posts of duty. The strikers and their sympathizers took forcible possession of the railways within and adjacent to Chicago, and prevented the passage of any trains for some days. They derailed engines and cars; assailed passengers, as well as non-striking employees, with stones and other missiles, and even fired upon them. More than a thousand loaded freight-cars were set on fire and destroyed, as well as numerous signal-towers; and many lives were sacrificed as the result of mob violence.

That even Debs was shocked at the havoc he had wrought is apparent from the following statement which he issued on July 12th:

"The strike, small and comparatively unimportant in its inception, has extended in every direction, until now it involves or threatens, not only every public interest, but the peace, security and prosperity of our common country. The contest has waged fiercely. It has extended far beyond the limits of interests originally involved, and has laid hold of a vast number of industries and enterprises in no wise responsible for the differences that led to the trouble. Factory, mill, mine and shop have been silenced; wide-spread demoralization has sway. The interests of multiplied thousands of people are suffering. The common welfare is seriously menaced. The public peace and tranquillity imperilled. Grave apprehensions for the future prevail."

While this state of things existed, the courts were applied to for injunctions against Debs and his fellow conspirators; the writs were issued, served and disobeyed; whereupon these leaders of the mob and flouters of judicial writs were arrested and jailed for contempt of court. This was the beginning of the end. True, Federal troops had been called out and were engaged in defending life and property against mob violence. But it was the action of the courts that dealt the death blow to the gigantic conspiracy of Debs and his fellows, to take the American people by the throat and starve them into forcing the Pullman Company to run its business in accordance with their demands. In his testimony before the Federal Strike Commission, Debs said:

"As soon as the employees found that we were arrested and taken from the scene of action, they became demoralized, and that ended the strike. It was not the soldiers. It was simply the United States courts that ended the strike, by restraining us from discharging our duties as officers and representatives of our employees."

Should the power to issue injunctions in such a case be taken from the courts?

Congressman William B. Wilson, of Pennsylvania, answers, Yes. In his opinion, an injunction should never be granted in labor troubles, even though the concerted and violent action of boycotting laborers paralyzes business "over all the lines of the United States." * Similar views have been expressed by Mr. Gompers, President of the American Federation of Labor, by Mr. Spelling, its counsel, and other labor leaders. They hold that no property right is invaded by a labor boycott, even when it results in forcing non-union laborers out of employment and in paralyzing the employer's business. They ask for a statutory

* Hearings on House Bill 19745 at p. 507.

definition of property which shall make it clear that there is "no property or property rights in labor or the labor power of any person or persons, nor in the patronage of any person." * At their request Congressman Pearre introduced a bill declaring that "no right to continue the relation of employer and employee, or to assume or create such relation with any particular person or persons, or at all, or to carry on business of any particular kind, or at any particular place, or at all, shall be construed, held, considered or treated as property or as constituting a property right."

Verily, were that bill to pass and to be held constitutional, it would revolutionize existing conceptions of property rights. What a boon it would prove to the Standard Oil Company and similar organizations, in the efforts which they are charged with making to crush rivals! And it would legalize the boycott in its worst forms. It is now well settled that "a person's occupation or calling, by means of which he earns a livelihood for himself and those dependent upon him, is property, and entitled to protection as such, aside from the goods, chattels, money or effects employed in connection therewith." † Such has been the doctrine of the common law for centuries.

But Mr. Gompers and his school of social economists propose to change all this. They insist upon the right to paralyze the business of any employer whom they deem unfair, as they did in the Danbury Hat case, and as they tried to do in the case of the George Jonas Glass Company. Because the latter company would not conduct its business in accordance with the rules of the Glass Bottle Blowers' Association, one of which was that the company should employ only one apprentice to fifteen journeymen, the association ordered all union men to leave the company's employ; induced non-union men to quit by promising to take care of them and pay them good wages if they went out; coerced patrons of the company into withdrawing all patronage by threats of a boycott; and collected the strikers in a body and encamped them near the company's factory to terrorize the neighborhood, and to prevent persons who wished to labor from reaching the company' works.

The result was not only a great property loss to the company, but a flagrant invasion of the rights of non-union laborers, cul-

* Hearings on House Bill 19745, pp. 51, 637, 647.

† Gray *vs.* Building Trades Council, 91 Minn., 171.

minating in the assassination of an employee who attempted to return to work.

Messrs. Gompers and Wilson assert that in such cases the purpose of the labor organization is not to injure the employer or destroy his business, but simply to secure what they deem to be fair working terms for themselves. That is very euphemistic. When the representatives of these organizations appear before a recalcitrant employer they use no such soft words. They give him plainly to understand, as in Purvis *vs.* Local No. 500, United Brotherhood of Carpenters (214 Pa., 348), that he must unionize his plant or quit business. "Their means of persuasion," said the court in that case, "are the destruction of the property of those whom they would persuade." "How absurd is it," declared another court, "to call this peaceable persuasion, and how absurd to argue that, if the law attempts to prevent it, the rights of workmen to organize for their common benefit is frustrated."

Another euphemism of the Gompers school is that a boycott is always spontaneous. There is no conspiracy about it. A great variety of organizations, and their thousands of members, of a sudden and at the same moment experience the conviction that not one of them should wear the Danbury hat, or use any product of the Bucks Stove and Range Company. Hence they withdraw their patronage. Indeed, the conviction is so keen and dominant that they are unanimously impelled to persuade all persons with whom they deal to cease patronizing these unfair establishments. Incidentally, they notify such persons that if the latter continue to wear Danbury hats or use Bucks stoves, it will be at the peril of giving up all beneficial business intercourse with the notifiers and their friends.

This plea of spontaneity was interposed by Phelan when brought before Judge Taft for contempt in violating an injunction. "He would have the court believe," said Judge Taft, "that what occurred was wholly spontaneous and not through his agency, and that his business was, if there should be such coincidental spontaneity resulting in a strike, to prevent disorder and to look after the sick." Unfortunately for Phelan, his telegrams to Debs and his speeches were matters of record, and proved conclusively that the boycott was the work of a few leaders and not the result of a spontaneous outburst of feeling among the mass of employees.

Objection is made to the use of injunctions in labor controversies, on the ground that there is an adequate remedy at law. Congressman Wilson puts it in this way:

> "Every State in the Union through its Legislature, when it has enacted into law what is a remedy in cases of that kind, has provided a remedy against the use of force, has provided penalties and punishments where force is used. The legislative body has determined what is an adequate remedy at law, and, notwithstanding that fact, our courts assume that there is no adequate remedy at law, and issue restraining orders preventing the use of force."

Here again the labor leaders contend for the application of a different rule to them from that which applies to other violators of the law. The Legislature has provided penalties and punishments for the maintenance of a house of ill fame; but if such a house, or any other form of public nuisance, is maintained in a residential locality, it may be enjoined by any neighbor whose property is injured thereby. (Cranford *vs.* Tyrrell, 128 N. Y., 341.)

Perhaps the objection most strenuously urged to the use of injunctions in labor cases, with the accompanying contempt proceedings for the punishment of their violation, is that it results in a denial of a trial by jury to persons charged with crime. For a full and convincing reply to this objection the reader is referred to the great opinion of our highest court *in re* Debs (158 U. S., 564). We have not space even to summarize it here. But this should be noted: "A court enforcing obedience to its orders by proceedings for contempt is not executing the criminal laws of the land, but only securing to suitors the right which it has adjudged them entitled to." Contempt proceedings against a labor leader for violation of an injunction are instituted and conducted precisely as are such proceedings against any other violator of this writ. Why should the law-breaking striker or boycotter be accorded a special privilege in the matter of injunction contempts? Moreover, if the violator of an injunction is thereafter indicted for a crime which he committed while engaged in such violation, the contempt proceedings have no relevancy to the issue in the criminal trial. The two are wholly separate and distinct. The penalties imposed by the criminal law furnish no standard for the punishment in contempt proceedings.

The topic of this paper has furnished the theme for voluminous and passionate appeals before the platform committees of our recent National Conventions. Fortunately, as the writer thinks, neither of the great parties has committed itself to any such doctrine as that contained in the Pearre bill, while both have recorded their confidence in the courts. True, the Democratic platform pledges provision "for trial by jury in cases of indirect contempt"—that is, of contempt committed outside the precincts of the court; but it also declares that "the parties to all judicial proceedings should be treated with rigid impartiality."

It seems probable, therefore, that no radical legislation on this topic will result from the impending Presidential campaign, whichever candidate is elected; but that the courts will be allowed to control the writ of injunction, in the future as in the past, without the hindrance of statutes enacted in the heat of partisan excitement.

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